DISTRIBUTED
JAN - 8 2003

ORIGINAL

Supreme Court, U.S.
FILED
JAN 8 2003
CLERK

DOCKET NO. 02-6683

SUPREME COURT OF THE UNITED STATES

HERNAN O'RYAN CASTRO

Petitioner,

vs.

UNITED STATES OF AMERICA.

Respondent

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

REPLY BRIEF OF PETITIONER

Michael G. Frick
N. Daniel Lovein
HALL, BOOTH & SMITH, AND SLOVER, P.C.
11 St. Andrews Court, Ste. 200
Brunswick, GA 31520
(912) 554-0093

Attorneys for Hernan O'Ryan Castro

RECEIVED
JAN 8 2003
OFFICE OF THE CLERK
SUPREME COURT, U.S.

5 pp

DOCKET NO. 02-6683

SUPREME COURT OF THE UNITED STATES

HERNAN O'RYAN CASTRO

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent

On Petition for Writ of Certiorari to the United States Court of Appeals
for the Eleventh Circuit

REPLY BRIEF

COMES NOW, Petitioner in the above-referenced case and files this his Reply Brief to the Brief of the United States in Opposition to Petitioner's Petition for Writ of Certiorari and shows this Honorable Court the following:

In the second argument made by the Government in its Brief in Opposition, the Government states that "further review is also unwarranted in this case because Petitioner cannot prevail on his motion under § 2255 in any event." The Government then goes on to argue that the Petitioner's underlying § 2255 claim must fail based on the evidence presented at the evidentiary hearing held before the Magistrate Judge. As the Government points out, the Magistrate Judge ultimately did not rule on the merits of Petitioner's § 2255 claim, because the Magistrate Judge determined, as a

preliminary matter, that the § 2255 claim was barred as a second § 2255 motion that had not been certified by the Court of Appeals.

Therefore, the Government argues, that even if the underlying § 2255 petition had been heard by the Magistrate Court Judge, the evidence presented at the hearing before the Magistrate Court Judge does not support Petitioner's claim that his attorney rendered ineffective assistance of counsel by failing to move to suppress certain post-arrest statements made by Petitioner. The Government misses the point. The purpose of the Petition for Writ of Certiorari before this Honorable Court is to determine whether or not Petitioner has a right to bring his alleged second § 2255 motion without having it certified by the Court of Appeals. If this Honorable Court decides that Petitioner has the right to have his claim heard, (as Petitioner has argued in his Petition for Writ of Certiorari), the Magistrate Court Judge will then have the opportunity to rule on the Petitioner's § 2255 Petition based on the evidence which the Magistrate Court Judge heard. In other words, the Government is now asking this Honorable Court to substitute itself as the fact finder at the hearing which was held in front of the Magistrate Court Judge and to deny the Petitioner's § 2255 petition on its merits. The proper court to decide the issue on the merits is the Magistrate Court, which swore the witnesses and heard the testimony. The issue presented to this Honorable Court is not whether Petitioner's § 2255 petition should be granted. The issue is whether or not the Petitioner's first titled § 2255 petition should be heard.

Respectfully submitted this 6th day of January, 2003.

Michael G. Frick
N. Daniel Lovein

MICHAEL G. FRICK
Georgia Bar # 277125
N. DANIEL LOVEIN
Georgia Bar # 459329

Attorneys for Petitioner Hernan O'Ryan Castro

HALL, BOOTH & SMITH, & SLOVER P.C.
11 St. Andrews Court, Ste. 200
Brunswick, GA 31520
(912) 554-0093

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that as required by Supreme Court Rule 29 I have this day served a copy of the within and foregoing **REPLY BRIEF OF Petitioner** upon all parties to this matter, and every other person required to be served, by depositing a true copy of same in the United States Mail, in a properly addressed envelope with adequate postage thereon to the counsel of record as follows:

Solicitor General of the United States
Room 5614
Department of Justice
950 Pennyslvania Ave., N.W.
Washington, D.C. 20530-0001

This 6th day of January, 2003.

Michael G. Frick
N. Daniel Lovein

MICHAEL G. FRICK
Georgia Bar # 277125
N. DANIEL LOVEIN
Georgia Bar # 459329

Attorneys for Petitioner Hernan O'Ryan Castro

HALL, BOOTH & SMITH, & SLOVER P.C.
11 St. Andrews Court, Ste. 200
Brunswick, GA 31520
(912) 554-0093